

12VAC30-120-350. PCP remedies for violation, breach, or nonperformance of provider agreement terms and addendum.

A. The sanctions, as described in Section 1932(e)(1) of the Social Security Act (the Act) and listed in Section B below, may be imposed by DMAS if the PCP:

1. Fails substantially to provide medically necessary services that the PCP is required to provide, under law or under its contract with DMAS, to an enrollee covered under the contract.

2. Imposes, on enrollees, premiums or charges that are in excess of the premiums or charges permitted under the Medicaid program.

3. Acts to discriminate among enrollees on the basis of their health status or need for health care services.

4. Misrepresents or falsifies information furnished to the Commonwealth.

5. Misrepresents or falsifies information furnished to an enrollee, potential enrollee, or health care provider.

6. Has distributed directly or indirectly, through any agent or independent contractor, marketing materials that have not been approved by DMAS or that contain false or materially misleading information.

7. Has violated any of the other applicable requirements of sections 1932 or 1905(t)(3) of the Act and any implementing regulations.

8. For those violations referred to in subsection (A)(7) above, DMAS may impose any of the sanctions listed in 42 CFR 438.702(a)(3)-(5).

B. Section 1932(e)(2) of the Act provides for the Commonwealth to impose the following civil money penalties and other sanctions:

1. A maximum of \$25,000 for each determination of failure to provide services; misrepresentations or false statements to enrollees, potential enrollees, or health care providers; or marketing violations.

2. A maximum of \$100,000 for each determination of discrimination or misrepresentation or false statements to the Commonwealth.

3. A maximum of \$15,000 for each recipient the Commonwealth determines was not enrolled because of a discriminatory practice (subject to the \$100,000 overall limit specified in (B)(2) above).

4. A maximum of \$25,000 or double the amount of the excess charges (whichever is greater) for charging premiums or charges in excess of the amounts permitted under the Medicaid program. DMAS shall deduct the excess amount charged from the penalty and return it to the affected enrollees.

~~A.~~ 5. Termination. Either the PCP or DMAS may terminate the PCP's enrollment in the MEDALLION program at any time if either party determines that the other party has failed to perform any of its functions or duties under the addendum to the provider agreement (hereafter referred to as the addendum) between the Department and the PCP. In such event, the party exercising this option shall notify the other party in writing of the intent to terminate the addendum and shall give the other party 30 days to correct the identified violation, breach or nonperformance of the addendum. If such violation, breach or nonperformance of the

addendum is not satisfactorily addressed within this time period, the exercising party must notify the other party in writing of its intent to terminate the addendum at least 60 days prior to the proposed termination date. The termination date shall always be the last day of the month in which the 60th day falls. ~~The addendum may be terminated by DMAS sooner than the time periods for notice specified in this subsection if DMAS determines that a recipient's health or welfare is jeopardized by continued enrollment under the care of the PCP. After DMAS notifies a PCP that it intends to terminate the contract, DMAS will give the PCP's enrollees written notice of the State's intent to terminate the contract and will allow enrollees to disenroll immediately without cause. The State shall provide a pre-termination hearing pursuant to 42 CFR 438.710.~~

~~B.~~ 6. Suspension of new enrollment, including default enrollment.

1. a. Whenever DMAS determines that the PCP is out of compliance with the addendum, it may suspend the PCP's right to enroll new recipients. DMAS, when exercising this option, shall notify the PCP in writing of its intent to suspend new enrollment at least 30 days prior to the beginning of the suspension period. The suspension period may be for any length of time specified by DMAS, or may be indefinite. The suspension period may extend up to any expiration date of the addendum.

~~2.~~ b. DMAS may also suspend new enrollment or disenroll recipients in anticipation of the PCP not being able to comply with federal or state laws at its current enrollment level. Such suspension shall not be subject to the 30-day notification requirement. DMAS may notify

recipients of their PCP's noncompliance and provide an opportunity to enroll with another PCP.

~~7.~~ 7. Withholding of management or other payments and recovery of damage costs. DMAS may withhold portions of management or other fees or otherwise recover damages from the PCP as follows:

~~1.~~ a. Whenever DMAS determines that the PCP has failed to perform an administrative function required under this contract, ~~the department~~ DMAS may withhold a portion of management or other fees to compensate for the damages which this failure has entailed. For the purposes of this section, "administrative function" is defined as any contract obligation other than the actual provision of contract services.

~~2.~~ b. In any case under this contract where DMAS has the authority to withhold management or other fees, DMAS also shall have the authority to use all other legal processes for the recovery of damages.

~~8.~~ 8. Department-initiated disenrollment. DMAS may reduce the maximum enrollment level or number of current enrollees whenever it determines that the PCP has:

~~a: failed~~ Failed to provide or arrange for the provision of one or more of the services required under the addendum to the provider agreement, or ~~that the PCP has~~

~~b: failed~~ Failed to maintain or make available any records or reports required under the addendum which DMAS requires to determine whether the PCP is providing services as required. The PCP shall be given at least 30 days notice prior to DMAS taking any action set forth in this subsection.

~~E.~~ 9. Inappropriate service delivery. PCPs demonstrating a pattern of inappropriate provision of services may be subject to suspension of new enrollments, withholding, in full or in part, of management fees, addendum termination, or refusal to be offered the opportunity to participate as a PCP in a future time period.

CERTIFIED:

Date

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